

## **Senate Bill No. 676**

### **CHAPTER 291**

An act to amend Section 502.01 of, and to add Section 647.8 to, the Penal Code, relating to disorderly conduct.

[Approved by Governor September 9, 2015. Filed with  
Secretary of State September 9, 2015.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 676, Cannella. Disorderly conduct: invasion of privacy.

Existing law provides that a person who photographs or records by any means the image of the intimate body part or parts of another identifiable person, under circumstances where the parties agree or understand that the image shall remain private, and the person subsequently distributes the image taken, with the intent to cause serious emotional distress, and the depicted person suffers serious emotional distress, is guilty of disorderly conduct, a misdemeanor.

Under existing law, matter that depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct, as defined, and that is in the possession of any city, county, city and county, or state official or agency is subject to forfeiture pursuant to a petition for forfeiture brought in the county in which the matter is located. Existing law provides for forfeiture by a defendant of illegal telecommunications equipment, or a computer, computer system, or computer network, and any software or data that was used in committing specified crimes, including depiction of a person under 18 years of age personally engaging in or personally simulating sexual conduct.

This bill would make the forfeiture provisions described above applicable to illegal telecommunications equipment, or a computer, computer system, or computer network, and any software or data, when used in committing a violation of disorderly conduct related to invasion of privacy, as specified. The bill would also establish forfeiture proceedings for matter obtained through disorderly conduct by invasion of privacy, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 502.01 of the Penal Code is amended to read:

502.01. (a) As used in this section:

(1) "Property subject to forfeiture" means any property of the defendant that is illegal telecommunications equipment as defined in subdivision (g) of Section 502.8, or a computer, computer system, or computer network, and any software or data residing thereon, if the telecommunications device,

computer, computer system, or computer network was used in committing a violation of, or conspiracy to commit a violation of, subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, 537e, 593d, 593e, 646.9, or subdivision (j) of Section 647, or was used as a repository for the storage of software or data obtained in violation of those provisions. Forfeiture shall not be available for any property used solely in the commission of an infraction. If the defendant is a minor, it also includes property of the parent or guardian of the defendant.

(2) “Sentencing court” means the court sentencing a person found guilty of violating or conspiring to commit a violation of subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, 646.9, or subdivision (j) of Section 647, or, in the case of a minor, found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of those provisions, the juvenile court.

(3) “Interest” means any property interest in the property subject to forfeiture.

(4) “Security interest” means an interest that is a lien, mortgage, security interest, or interest under a conditional sales contract.

(5) “Value” has the following meanings:

(A) When counterfeit items of computer software are manufactured or possessed for sale, the “value” of those items shall be equivalent to the retail price or fair market price of the true items that are counterfeited.

(B) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the “value” of those components of computer software packages shall be equivalent to the retail price or fair market price of the number of completed computer software packages that could have been made from those components.

(b) The sentencing court shall, upon petition by the prosecuting attorney, at any time following sentencing, or by agreement of all parties, at the time of sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this section. At the forfeiture hearing, the prosecuting attorney shall have the burden of establishing, by a preponderance of the evidence, that the property or property interests are subject to forfeiture. The prosecuting attorney may retain seized property that may be subject to forfeiture until the sentencing hearing.

(c) (1) Prior to the commencement of a forfeiture proceeding, the law enforcement agency seizing the property subject to forfeiture shall make an investigation as to any person other than the defendant who may have an

interest in it. At least 30 days before the hearing to determine whether the property should be forfeited, the prosecuting agency shall send notice of the hearing to any person who may have an interest in the property that arose before the seizure.

(2) A person claiming an interest in the property shall file a motion for the redemption of that interest at least 10 days before the hearing on forfeiture, and shall send a copy of the motion to the prosecuting agency and to the probation department.

(3) If a motion to redeem an interest has been filed, the sentencing court shall hold a hearing to identify all persons who possess valid interests in the property. No person shall hold a valid interest in the property if, by a preponderance of the evidence, the prosecuting agency shows that the person knew or should have known that the property was being used in violation of, or conspiracy to commit a violation of, subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, 646.9, or subdivision (j) of Section 647, and that the person did not take reasonable steps to prevent that use, or if the interest is a security interest, the person knew or should have known at the time that the security interest was created that the property would be used for a violation.

(d) If the sentencing court finds that a person holds a valid interest in the property, the following provisions shall apply:

(1) The court shall determine the value of the property.

(2) The court shall determine the value of each valid interest in the property.

(3) If the value of the property is greater than the value of the interest, the holder of the interest shall be entitled to ownership of the property upon paying the court the difference between the value of the property and the value of the valid interest.

If the holder of the interest declines to pay the amount determined under paragraph (2), the court may order the property sold and designate the prosecutor or any other agency to sell the property. The designated agency shall be entitled to seize the property and the holder of the interest shall forward any documentation underlying the interest, including any ownership certificates for that property, to the designated agency. The designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(4) If the value of the property is less than the value of the interest, the designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(e) If the defendant was a minor at the time of the offense, this subdivision shall apply to property subject to forfeiture that is the property of the parent or guardian of the minor.

(1) The prosecuting agency shall notify the parent or guardian of the forfeiture hearing at least 30 days before the date set for the hearing.

(2) The computer or telecommunications device shall not be subject to forfeiture if the parent or guardian files a signed statement with the court at least 10 days before the date set for the hearing that the minor shall not have access to any computer or telecommunications device owned by the parent or guardian for two years after the date on which the minor is sentenced.

(3) If the minor is convicted of a violation of Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472, 476, 480, or subdivision (b) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, or subdivision (j) of Section 647, within two years after the date on which the minor is sentenced, and the violation involves a computer or telecommunications device owned by the parent or guardian, the original property subject to forfeiture, and the property involved in the new offense, shall be subject to forfeiture notwithstanding paragraph (2).

(4) Notwithstanding paragraph (1), (2), or (3), or any other provision of this chapter, if a minor's parent or guardian makes full restitution to the victim of a crime enumerated in this chapter in an amount or manner determined by the court, the forfeiture provisions of this chapter do not apply to the property of that parent or guardian if the property was located in the family's primary residence during the commission of the crime.

(f) Notwithstanding any other provision of this chapter, the court may exercise its discretion to deny forfeiture where the court finds that the convicted defendant, or minor adjudicated to come within the jurisdiction of the juvenile court, is not likely to use the property otherwise subject to forfeiture for future illegal acts.

(g) If the defendant is found to have the only valid interest in the property subject to forfeiture, it shall be distributed as follows:

(1) First, to the victim, if the victim elects to take the property as full or partial restitution for injury, victim expenditures, or compensatory damages, as defined in paragraph (1) of subdivision (e) of Section 502. If the victim elects to receive the property under this paragraph, the value of the property shall be determined by the court and that amount shall be credited against the restitution owed by the defendant. The victim shall not be penalized for electing not to accept the forfeited property in lieu of full or partial restitution.

(2) Second, at the discretion of the court, to one or more of the following agencies or entities:

- (A) The prosecuting agency.
- (B) The public entity of which the prosecuting agency is a part.
- (C) The public entity whose officers or employees conducted the investigation resulting in forfeiture.
- (D) Other state and local public entities, including school districts.
- (E) Nonprofit charitable organizations.

(h) If the property is to be sold, the court may designate the prosecuting agency or any other agency to sell the property at auction. The proceeds of the sale shall be distributed by the court as follows:

(1) To the bona fide or innocent purchaser or encumbrancer, conditional sales vendor, or mortgagee of the property up to the amount of his or her interest in the property, if the court orders a distribution to that person.

(2) The balance, if any, to be retained by the court, subject to the provisions for distribution under subdivision (g).

SEC. 2. Section 647.8 is added to the Penal Code, to read:

647.8. (a) Matter that is obtained or distributed in violation of subdivision (j) of Section 647 and that is in the possession of any city, county, city and county, or state official or agency is subject to forfeiture pursuant to this section.

(b) An action to forfeit matter described in subdivision (a) may be brought by the Attorney General, the district attorney, county counsel, or the city attorney. Proceedings shall be initiated by a petition of forfeiture filed in the superior court of the county in which the matter is located.

(c) The prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds. The notice shall state that any interested party may file a verified claim with the superior court stating the amount of his or her claimed interest and an affirmation or denial of the prosecuting agency's allegation. If the notice cannot be given by registered mail or personal delivery, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property is located. All notices shall set forth the time within which a claim of interest in the property seized is required to be filed.

(d) (1) Any person claiming an interest in the property or proceeds may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, county counsel, or city attorney, as appropriate.

(2) If, at the end of the time set forth in paragraph (1), an interested person has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged interest, and it shall be subject to forfeiture upon proof of compliance with subdivision (c).

(e) The burden is on the petitioner to prove beyond a reasonable doubt that matter is subject to forfeiture pursuant to this section.

(f) It is not necessary to seek or obtain a criminal conviction prior to the entry of an order for the destruction of matter pursuant to this section. Any matter described in subdivision (a) that is in the possession of any city, county, city and county, or state official or agency, including found property, or property obtained as the result of a case in which no trial was had or that has been disposed of by way of dismissal or otherwise than by way of conviction may be ordered destroyed.

(g) A court order for destruction of matter described in subdivision (a) may be carried out by a police or sheriff's department or by the Department of Justice. The court order shall specify the agency responsible for the destruction.

(h) As used in this section, "matter" means any picture, photograph, image, motion picture, video tape, film, filmstrip, negative, slide, photocopy, or other pictorial representation, recording, or electrical reproduction. "Matter" also means any data storage media that contains the image at issue, but does not include the computer, camera, telecommunication or electronic device, unless the matter consists solely of electronic information stored on a device that cannot be altered or erased.

(i) Prior for granting an order for destruction of matter pursuant to this section, the court may require the petitioner to demonstrate that the petition covers no more property than necessary to remove possession of the offending matter.

(j) It is a defense in any forfeiture proceeding that the matter seized was lawfully possessed in aid of legitimate scientific or educational purposes.